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EXAMINER

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Please find below and/or attached an Office communication concerning this application or proceeding.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 3-12, 15, 16 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kittrell et al in combination with Heaven. Kittrell et al teach a device as claimed except for the particular deflection member. Heaven teaches a deflection member (see figure 1) which has a cut out and, when viewed in profile, an hour glass shape wherein the width of the cut away portion is less than the diameter of the non – cut away portion. It would have been obvious to insert the device of Kittrell et al into the device of Heaven or to employ the elongate and the deflection member of Heaven in the device of Kittrell et al, for example in place of element 140 in figure 14, since Kittrell et al envision a wide variety of deflection mechanisms; to provide multiple deflection members to allow deflection in multiple directions; and to form the deflection member so as to run from the proximal end of the catheter, since this would provide greater strength as shown by Heaven, thereby rendering the cutout at the distal end of the deflection member, and to form the member or surround the member with a fluoropolymer, since these are notorious for use in catheters and provide a lubricious surface, official notice which has already been taken, and to provide the particular location of the cutout, since this is not critical and provides no unexpected result, thus producing a device such as claimed.

Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kittrell et al in combination with Heaven as applied to claim12 above, and further in view of Vassiliadis et al. Vassiliadis et al teach the use of a gold coating on a laser applicator. It would have been obvious to the artisan of ordinary skill to employ a gold coating, as taught by Vassiliadis, since this would protect tissue from unintended irradiation, thus producing a device such as claimed.

Claims 17-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heaven in combination with Kittrell et al. The teachings of Heaven and Kittrell et al and the motivation for modification and combination thereof are essentially those already set forth above. It would have been obvious to the artisan of ordinary skill to repeatedly advance the fiber device of Kittrell et al when it is inserted through the tubular member of Heaven, since Kittrell et al a specify the device is to be advanced through the lumen until the obstruction is removed, thus producing a method such as claimed.

Claims 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Heaven in combination with Kittrell et al as applied to claims 17-21 are above, and further in view of Isner et al. Isner et al teach a method of treating tachycardia including inserting a catheter and inserting a fiber therein for applying laser energy to the foci responsible for the tachycardia. It would have been obvious to the artisan of ordinary skill to employ the tachycardia treatment method of Isner et al in the surgical device placement method of Heaven, since Heaven teach that the device can be used with a variety of medical procedures thus producing a method such as claimed.

Applicant argues that the outer member of Heaven is slidably attached to the tubular member. While applicant's theory as to the connection between the outer member and tubular member of Heaven is interesting the examiner has found no support therefore in Heaven. Indeed, the discussion of the sheath and its function does little to bolster this assertion. Heaven provides the outer member such that it covers at least the cut out portion of the tubular member and describes its effect as reducing resistance to movement and patient discomfort (column 6 lines 12-18). If, as applicant theorizes, the tubular member and the outer member were slidably

engaged, as the device of Heaven is advanced through the body, the outer member would become displaced either by differential frictional forces on the two members, or by the creeping of the outer member that would result from repeated bending and flexing of the tubular member. The bending of the tubular member resulting from force applied by the articulating means (see column 6 lines 29-42) would also displace the tubular member relative to the outer member, were the two not fixedly joined.

Applicant's arguments filed July 24, 2002 have been fully considered but they are not persuasive. The arguments are not convincing for the reasons set forth above.

Any inquiry concerning this communication should be directed to David Shay at telephone number 308-2215.



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May 14, 2003